IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1353 OF 2006

IN

SUMMARY SUIT NO.2447 OF 2005

Smt.Manorama R.Dhamnaskar .. Plaintiff.

Versus

Post Master General & Ors. .. Defendants.

And

Pratap R.Dhamnaskar .. Respondent.

Mr.A.P.Rege for plaintiff.

Mr.P.Sutar i/b.S.I.Shah for defendant.

Mr.S.S.Mishra for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 19TH JULY, 2007.

P.C.:

1. This Chamber Summons is taken out by the plaintiff mother for impleading the respondent as defendant No.2 to the suit.

2. She has filed this suit against the original defendant, who is none other than the Postmaster and

Senior Superintendent of Post Office so also the Sub Postmaster.

3. The claim in the suit is that the plaintiff mother, aged 77 years old and being a widow had along with her deceased husband Raghunath, availed of a monthly income scheme by opening an account with the defendant No.3 and depositing therein various sums.

4. Upon her husband’s death, she visited the Post Office concerned and enquired with regard to the balance to her credit. At which time, although she was a joint holder, the amounts were not given to her because the accounts were closed by the third defendant.

5. Now, she has stated on oath that she discovered that the account has been closed with the concerned Post Office by none other than but the respondent son and acting in collusion with the concerned defendants, the monies have been appropriated by him exclusively.

6. For the relief that she seeks in the suit, in her view, that the presence of the respondent son would be necessary to adjudicate upon effectively and completely over the controversy in the suit.

7. A reply affidavit has been filed by the respondent son and he denies that he is either necessary or a proper party. He submits that his presence is not necessary and the suit can proceed without him.

8. However, it is not material to note that the relationship is not denied so also it is contended that the amounts were paid over to the respondent son by the subject Post Office after the respondent intimated to them that all concerned have been duly informed by him. The respondent son does not dispute that he had a definite role to play in the closing and opening of the account and he denies the allegations of fraud and collusion.

9. Considering the nature of the reliefs claimed and applying tests laid down by the Hon’ble Supreme Court, in my view, the presence of the respondent son is necessary for effectively and properly adjudicating upon the controversy in the suit. It is necessary to ascertain as to whether the son was at any time representing the mother, who was a joint holder of the subject account alongwith deceased husband.

10. In such circumstances, her interest in the property being an issue and the amounts having been paid over to the respondent by the concerned Post Office,

presence of the respondent would be necessary for resolving the controversy finally.

11. In the light of this, Chamber Summons is made absolute in terms of prayer clause (a). Amendment to be carried out within two weeks from today. Copy of amended plaint to be served on the defendants within a period of two weeks from the date of carrying out the amendment. Written statement/additional written statement to be filed within a period of two weeks from the date of receipt of a copy of amended plaint.

12. Chamber Summons is disposed of as above.

(S.C.Dharmadhikari, J.)